IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8571 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALWA SEVA SAHAKARI MANDLI LTD

Versus

KISHORKUMAR JAYANTILAL KANSAGARA

Appearance:

1. Special Civil Application No. 8571 of 1995

MR DM THAKKAR for Petitioner No. 1

MR AK CLERK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr.D.M.Thakkar on behalf of the petitioner and learned advocate Mr.A.K.Clerk for respondent workman.

In the present petition, the petitioner has challenged the award passed by the Labour Court, Jamnagar in Old Reference No.1093 / 1983 [New number : 76 / 1990] dated 10th March, 1995, wherein the labour court has granted reinstatement with continuity of service with 60 % backwages of the interim period. The second order is also passed by the labour court, Jamnagar in Miscellaneous Application No. 3 / 1995 in main Reference No.76 / 1990 dated 8th August, 1995.

Learned advocate Mr.D.M.Thakkar appearing on behalf of the petitioner has submitted that because of the negligence of the Advocate, the petitioner was not present before the concerned labour court. He also submitted that because of some carelessness on the part of the Advocate, the party should not suffer. He also submitted that sufficient care has been taken by the petitioner to remain present before the labour court as and when the notices were received and some telegrams messages were also sent by the petitioner to the labour court, even though the labour court has committed an error in deciding the matter exparte. He also submitted that even application for setting aside the exparte award is also rejected by the labour court and therefore, no opportunity was given to the petitioner before the labour court and therefore, the petitioner was not able to justify the action taken against the respondent. He also submitted that the view taken by the labour court is very much harsh as it has passed an order against the petitioner in absence and therefore the material was not produced on record and hence, there is no order on merits and as a consequence thereof, the orders impugned in this petition, required to be quashed and set aside. He, however, to support his contention relied on one decision of the Apex Court reported in 1972 Lab.I.C. 1262 and relying on paragraphs-22 and 23 and read over the said paragraphs before this Court. Relying on the said decision, he submitted that the Court should consider whether termination order is stigmatic or simpliciter order and in case of dishonesty and misappropriation, the Court should not have passed the order of reinstatement. Except that no other submission is made by the learned advocate Mr.Thakkar and no other decision has been relied upon by him in support of the case of the petitioner before this Court.

Learned advocate Mr.A.K.Clerk appearing on behalf of the respondent workman has submitted that it is gross case, wherein ample opportunities were given by the labour court to the petitioner even though the petitioner

has not taken any care to remain present and defend their case before the labour court. He also submitted that if any opportunity now is given to the petitioner, it amounts to great prejudice and gross injustice to the respondent workman who is out of job since 1983. He also submitted that at least 20 years has elapsed from the date of termination dated 18th February, 1983, and the litigation is pending awaiting decision. Learned advocate Mr.Clerk therefore contended that in all three occasions, the labour court has given ample opportunities but on none of the occasion the petitioner herein has availed any such opportunity and therefore, the labour court has rightly rejected the application submitted by the petitioner. He also submitted that detail order has been passed by the labour court on both the occasions viz. on first occasion at the time of passing the exparte award and even on the next occasion also, the labour court has considered the earlier exparte award which was passed against the very petitioner. Therefore, learned advocate Mr.Clerk submits that afterall this is all appreciation of evidence on record and this Court has very limited jurisdiction under Article 227 of the Constitution of India and therefore, according to him, no interference is required as the labour court has not committed any error while passing both the orders impugned in this petition.

I have considered submissions made by the learned advocates for the parties and also perused the orders passed by the labour court. This Court has also taken into consideration the decision relied by the learned advocate Mr.Thakkar. Not only that but the learned advocate Mr.D.M.Thakkar has read over both these impugned orders in detail before this Court. It is necessary to note one important aspect that the workman's service has been terminated on 18th February, 1983. He immediately raised industrial dispute, which was referred for adjudication on 29th July, 1983. The workman, thereafter, has filed statement of claim on 13th March, 1984 and after receiving the statement of claim from the workman, notice came to be issued by the labour court on the petitioner for submitting written statement. According to the record of the labour court, the labour court has issued notice vide Exh.5, 7, 8 and 9 but inspite of the fact that the notices served on the petitioner, on none of the occasion the petitioner has remained present before the concerned labour court, nor any Advocate was engaged for appearance before the labour court. Therefoer, earlier part, the labour court has examined the workman vide Exh.12 on 17th June, 1987 and thereafter, the exparte award was passed by the labour

court on 29th July, 1987. Against which, Misc. Application being No.125 / 1987 was filed by the petitioner and that was allowed by the labour court by order dated 4th July, 1988. But thereafter also, no written statement was filed by the petitioner before the labour court and ultimately, in the year 1990, the matter was transferred to Jamnagar Labour court. The labour court, Jamnagar has also issued notice of transferring the case of the petitioner at Jamnagar from Rajkot vide Exh.17, even though, the petitioner not remained present in response to the said notice. Thereafter, vide Exh.18 notice was also sent to the petitioner and that has been duly served by Exh.19 acknowledgment. Even though, the petitioner has not remained present before the labour court and no Advocate has been engaged by the petitioner. On 17th January, 1992 one application was submitted by the petitioner before the labour court pointing out before the labour court that talks of negotiation are going on between the parties and therefore, some longer date may be given. Therefoer, considering the said request, the labour court has adjourned the matter in March, 1992 but on that occasion also, the petitioner did not remain present before the labour court. Thereafter also, the matter was adjourned on 30th April, 1992 but on that occasion, vide Exh.19 one application was submitted by the respondent to close the right of filing of the reply of the petitioner. On this occasion also, time was sought by the petitioner even then, no written statement was filed. Therefore, ultimately the labour court has passed the order directing closure of rights of the petitioner to file written statement. Thereafter, the petitioner has filed written statement vide Exh.22 with permission to take on record. Actually the petitioner was to file written statement on 5th June, 1984 which was not filed and that is how the exparte award has been passed against the petitioner. Ultimately, the written statement was not taken on record by the labour court on the ground that no permission has been granted by the labour court to the petitioner to place on record the written statement. Then also, the petitioner again remained absent inspite of the various notices issued by the labour court and each and every occasion for grant of date, has been taken note and discussed by the labour court in detail in para-6. Even no oral evidence has been led by the petitioner before the labour court, nor the written statement was filed and produced before the labour court by the petitioner. Normally, the labour court should not have issued such repeated notices to the concerned party. After referring the matter for adjudication, even if one notice has been served on the party, thereafter, it becomes the duty of the concerned

party to take care and to remain present before the labour court as and when the matter is adjourned. It is not necessary that on each and every occasion, the Court should have issued notices on the concerned party and inform that such matter pending at what stage. However, in the case on hands, the labour court has taken more than sufficient care to inform the petitioner on each and every occasion. It has also come on record that the labour court has informed the petitioner to produce oral evidence and to file written submission and that notice is also separately issued and found to have served on the petitioner and inspite of this fact, no care has been taken by the petitioner to produce any documentary and oral evidence and written submissions before the labour court. Ultimately, telegram has been received by the labour court dated 6.1.1995 from the petitioner but no steps have been taken by the petitioner to engage any Advocate, nor any Officer remained present before the labour court. Therefore, ultimately notice dated 8th February, 1995 issued by the labour court to the effect that if the petitioner would not file written statement, ultimately the Court would pass appropriate orders even in absence of the petitioner. Thereafter, on second occasion, the petitioner has sent telegram vide Exh.31 and then the matter was adjourned on 7th March, 1995 but on that occasion also, no one remained present before the labour court on behalf of the petitioner. It also requires to be appreciated the observations made by the labour court that it is very painful to mention that the Court has become helpless to call upon the petitioner to remain present before the Court. The labour court has further observed that inspite of the sincere efforts, the Court has failed to call upon the petitioner to remain present before the Labour Court. These are the observations made by the labour Judge who personally failed inspite of serious and sincere efforts but he was not able to compel the petitioner to remain present before the labour court. With such type of attitude and conduct of the petitioner, the labour court was not having any other option but to pass exparte award against the petitioner. Accordingly, the labour court has considered each and every aspect and passed the exparte award while setting aside the termination order dated 18th February, 1983. It is also relevant to note that inspite of the Resolution dated 10th April, 1983 in respect of the reinstatement of Respondent which was produced on record vide Exh.15 but even though that has not been implemented by the petitioner in favour of the respondent. Ultimately, considering the entire facts and circumstances, so also, the conduct and deliberate attempt of the petitioner not to remain present before

the labour court, which has delayed the matter and harassed the workman, the labour court has passed the order granting reinstatement with continuity of service with 60 % backwages of the interim period.

I have considered the award in question. According to my opinion, the labour court has rightly passed the exparte award and for that, the labour court has not committed any error because the labour court was able to pass exparte award after giving all reasonable opportunity and after making sincere and serious efforts by issuing various notices to the petitioner but the petitioner remained absent and ultimately after period of twelve years, the labour court was able to pass exparte award. For that, the petitioner has filed application for setting aside the exparte award. That aspect has been again narrated by the labour court in its order and in para-7 one contention was raised by the petitioner that their Advocate has given application on 8th February, 1995 and the matter was adjourned on 7th March, 1995 but the matter was taken up for orders and that aspect has been made it clear by the labour court that inspite of telegrams, subsequently, the petitioner remained absent and there is no Vakalatnama filed by any of the Advocate for the petitioner. However, said contention which was raised by the petitioner is also found to be false according to the finding given by the labour court. The labour court in said order considered the entire facts wherein there also narrated the details of earlier ex parte award and ultimately the labour court has come to the conclusion that there is deliberate attempt on the part of the petitioner to see that the matter should not have decided. But keeping in mind the conduct and considering the failure of sincere and serious efforts of the labour court to call upon the petitioner before the labour court, in my opinion, the labour court has rightly rejected the application filed by the petitioner, for that, the labour court has not committed any error.

Now considering the decision relied upon by the learned advocate Mr.D.M.Thakkar, in my opinion, there is no dispute with the ratio laid down by the Hon'ble Apex Court but the decision so cited is not helpful to the case of the petitioner because in the said decision, the question which was examined by the Apex Court that whether dismissal or termination is simpliciter or attached with stigma. In this case, the only question is whether the labour court has rightly passed the exparte award or not and the labour court has rightly rejected

the application for setting aside the exparte award or not. But it requires to be observed that this Court has merely examined the matter without examining the merits of the matter and this Court has not examined the aspect that whether the respondent was terminated simpliciter or attached with stigma. That aspect has not been examined by this Court. Therefore, the judgment which has been relied upon by the learned advocate Mr.Thakkar is not applicable to the facts of this case. It is also necessary to note that on earlier occasion, when exparte award was passed, the labour court has given once chance to the petitioner while restoring the Reference by way of setting aside the exparte award. But inspite of said opportunity, the same was not availed by the petitioner and again after giving chance, deliberate attempt on the part of the petitioner to remain absent was to see that case may linger and workman may suffer during the interim period without any source of income. Considering such attitude found apparently from the record and the conduct of the petitioner has been in detail discussed and examined by the labour court and ultimately, since the labour court had no any option but except to pass an exparte award which has been passed by the labour court after giving more than sufficient, reasonable opportunity to the petitioner. The labour court has in this case issued various notices which, in fact, ought not to have been issued under the Industrial Disputes Act, 1947. Thus, it is abundantly clear that the labour court concerned has afforded more than sufficient opportunities to see that the petitioner remain present and the labour court can pass the award after bi-parte hearing. But the Judge of the labour court has, as per his observations, discussed that he failed in his sincere efforts and therefoer, contention which has been raised by the learned advocate Mr.Thakkar in light of this background, cannot be accepted and therefore the same is rejected accordingly.

In light of above background that petitioner had chosen not to appear before the Labour Court inspite of various notices were received and remained continue absent. Therefore, once notices were served to petitioner, then, he should must take cognizance, otherwise, petitioner has to face consequences. That is the view taken by this Court in case of ND Patel & Co. v. Manubhai Karsanbhai Parmar and another reported in 1984 Lab. IC 1245. The relevant observations made in para 2 are reproduced as under:

"2. This award is challenged by the petitioner company on the ground that no notice has been served upon the petitioner by the Labour Court. It is contended that the proceedings before the Labour Court have been carried on in violation of the principles of natural justice in as much as no notice of the proceedings was ever served upon the petitioner. In reply affidavit, the workman has filed certain correspondence and at Annexures "F" and "G"two letters have been produced. Annexure "F" shows that the Secretary of Gujarat Engineering and General Kamdar Union had written a letter addressed to the petitioner Company. By this letter, the petitioner Company was informed that the date of filing reply to the claim statement which was sent to the petitioner along with the letter was May 20, 1980. It was also mentioned in the letter that the information was given as per the direction given by the Labour Court. This letter was replied to by the petitioner by its letter dated April 16, 1980 (Ann."G") wherein the petitioner acknowledged the letter dated April 9, 1980. In this letter, the petitioner contended that they were working as Contractor to M/s. Dodsal Private Ltd. for supplying labourers on each and every contract and in that view of the matter, the petitioner had no other alternative but to terminate the services when the contract for which the workman was engaged was over. It was also mentioned in the letter that the workman was taken in service on daily wage basis and in case there is any possibility of giving a new job, he would be engaged in a new job in future. It may be noted that in this letter the petitioner has nowhere stated that they were not aware of the proceedings before the Labour Court or that the intimation given by the Secretary of the Union was not proper and sufficient or that it was not in accordance with law. Strangely enough, there is no reference to these two letters in the entire petition which runs into about seven pages. A pointed question was put to the counsel for the petitioner as to why the fact regarding this correspondence particularly Annexures "F" and "G" by which it clearly transpires that the petitioner had a notice of the proceedings before the Labour Court, was not brought to the notice of the Court by mentioning the same in the petition? The petitioner was even given intimation about the next date of hearing by a

> letter written by the Secretary of the Union as per the direction given by the Labour Court. There is no explanation whatsoever as to why this fact was not brought to the notice of the Court at the time of admission of the petition. This is a very important and material fact. Since this important and material fact appears to have been deliberately suppressed from the Court, we are not inclined to interfere with the award passed by the Labour Court on this ground of suppression of material fact alone. Even on merits, we feel that once there is a notice either in prescribed form or in any other manner, the party concerned is bound to take cognizance thereof and appear before the Court concerned. It may be noted that it was not the contention of the petitioner that it had received notice but since the same was not in prescribed form it had chosen not to appear before the Labour Court. In this view of the matter also, the award passed by the Labour Court is not required to be interfered with. Hence the petition requires to be rejected. Rule discharged with cost."

Therefore, according to my opinion, the labour court has rightly rejected the application filed by the petitioner, for that, the labour court has not committed any error while passing both the impugned award and order respectively. As such, there is not procedural irregularity committed by the labour court. This Court cannot be act as an appellate authority and even can not reappreciate the same evidence while exercising the jurisdiction under Article 227 of the Constitution of India and even if two views are possible, this Court cannot interfere with the order in question. This aspect has been examined by the Apex Court recently in a reported decision 2003 [9] SCC 452 Head Note (H) wherein the Apex Court has observed that critical analyses of the orders passed by the subordinate court is not permissible while exercising the powers under Article 227 of the Constitution of India.

In view of my aforesaid discussion and considering the entire facts and circumstances of the case, so also, the observations made by the Labour Court, according to my opinion, there is not a slightest error committed by the labour court and as such, no interference of this Court is called for while exercising the powers under Article 227 of the Constitution of India and hence, there is no substance in the present petition

and same is rejected accordingly with cost quantified at Rs.10,000/- to be paid by the petitioner to the respondent workman.

Rule stands discharged. Interim relief, if any, stands vacated.

Date : 20.2.2004 [H.K.Rathod, J.]

#kailash, PS#